IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5114 OF 2006

Ratnagiri Gas and Power Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhavan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi-110 003. .... Petitioners

- Versus -

1. Dabhol Power Employees' Association at 309, Anant Laxmi Chambers, Dada Patil Marg, Naupada, Thane (W) - 400 602.

2. Dabhol Power Company having office at 1st Floor, Law House, 8, Pitha Street, Off: P.M. Road, Fort, Mumbai-400 001. .... Respondents

Sarvasri Shrikant Doijode with Parag Kabadi and Vatsal Shah i/b M/s. Doijode Associates for the Petitioners.

Shri A.V. Bukhari for the Respondent No.1.

Ms Manek Joshi i/b M/s. M & M Legal Venture for the Respondent No.2.

WITH

WRIT PETITION NO.4986 OF 2006

Ratnagiri Gas and Power Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at NTPC Bhavan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi-110 003. .... Petitioners

- Versus -

1. Dabhol Veej Prakalp Kamgar
   Sangh at Ranvi, Post -
   Anjanvel, Taluka Guhagar,
   District: Ratnagiri.

2. The Director,
   Dabhol Power Company
   having office at 1st Floor,
   Law House, 8, Pitha Street,
   Off: P.M. Road, Fort,
   Mumbai-400 001.

3. Managing Director,
   Industrial Development Bank
   of India having office at
   IDBI Tower, WTC Complex,
   Cuffe Parade, Mumbai.

4. Resident Manager,
   Punj Lloyd Project Side DPC,
   At Post: Anjanvel, Taluka
   Guhagar, Dist: Ratnagiri. .... Respondents

Sarvasri Shrikant Doijode with Parag Kabadi
and Vatsal Shah i/b M/s. Doijode Associates
for the Petitioners.

Shri Bhavesh Parmar for the Respondent No.1.

Ms Manek Joshi i/b M/s. M & M Legal Venture
for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 04, 2006

ORAL ORDER:

1. Since common question of law and facts arise in both these petitions, they were heard together and are being disposed of by this common order.

2. Heard. The petitioners challenge the order dated 24-4-2006 passed by the Industrial Court, Kolhapur in

Complaints (ULP) Nos.321 of 2002 and 81 of 2003. By the impugned order, the applications Exhibits U-17 and U-10 in the said Complaints (ULP) Nos.321 of 2002 and 81 of 2003 respectively have been allowed and the petitioners are directed to be impleaded as the party respondents in those complaints.

3. The petitioners challenge the impugned order on the ground that the finding of the Industrial Court that the petitioners are the necessary parties to the said complaints is contrary to the documents in the form of Consent Terms dated 22-9-2005 filed in Notice of Motion No.2666 of 2005 in Suit No.1116 of 2005 and the order passed by this Court on 22-9-2005 in the said Notice of Motion and therefore the said finding is perverse and therefore warrants interference in writ jurisdiction under Article 227 of the Constitution of India.

4. It is the contention of the petitioners that the petitioners have acquired the properties of the respondent No.2 through a financial institution pursuant to the consent order passed in the said proceedings by this Court and therefore the respondent No.1 cannot have any relationship of employees with the petitioners and hence the petitioners are neither necessary nor proper parties to the said complaints and in that context have sought to contend that the petitioners are not liable,

in any manner, for any past dues or claims or encumbrances, if any, by the respondent No.2 to the respondent No.1. The respondent No.1, on the other hand, contends that the petitioners are the successors of the respondent No.2 in relation to the establishment in question and, therefore, they are the necessary and proper parties to the proceedings.

5. Perusal of the impugned order discloses that the Industrial Court after taking into consideration the various provisions of law including the provisions of Section 25FF of the Industrial Disputes Act, 1947, hereinafter called as "the I.D. Act" as well as the copies of the documents placed on record and further the law laid down by the Apex Court in **N.T.C. (South Maharashtra) Ltd. & Ors. v. Rashtriya Mill Mazdoor Sangh & Ors.,** reported in 1993 I CLR page 602, **Immambhai Gulabhusen Shaikh v. The Regional Provident Fund Commissioner,** reported in 1982 Lab.I.C. page 1036, **S.G. Chemicals and Dyes Trading Employees Union v. S.G. Chemicals and Dyes Trading Co. Ltd. and another,** reported in 1986 I LLJ page 490, **Heavy Engineering Mazdoor Union and State of Bihar & Ors.,** reported in 1968 II LLJ page 54, **Abdul Rehman Abdul Gafur and Anr. v. Paul (Mrs.E) and Ors.,** reported in 1961 II LLJ page 693, **Hindustan Aeronautics Ltd. v. Their Workmen and Ors.,** reported in 1975 II LLJ page 336 as well as **Steel**

Authority of India Ltd. & Ors. etc. etc. v. National Union Water Front Workers & Ors. etc. etc., reported in 2001 III CLR page 349, has arrived at the prima facie finding that the petitioners have taken over the charge of the respondent No.2 and therefore are necessary parties to the proceedings to decide the matters on merit on all aspects while observing that whether the respondent No.1 are entitled for any claim against the petitioners is a matter to be finally decided after hearing the parties.

6. Drawing attention to the order dated 22-9-2005 passed by this Court in Notice of Motion No.2666 of 2005 in Suit No.1116 of 2005 and the Consent Terms filed in the said Notice of Motion, it was strenuously argued on behalf of the petitioners that the respondent No.1 would be entitled to claim relief, if any, only against the respondent No.2 and that has been clearly stated in the said order and particularly in paras 3 and 4 thereof. The liability towards the respondent No.1 was specifically assumed by the respondent No.2 under the Consent Terms and therefore the respondent No.1 is not entitled to pursue the complaint against the petitioners herein. Attention was also drawn to Clause 15 of the Consent Terms filed in the said Notice of Motion.

7. The Clause 15(i) of the Consent Terms reads thus:

"It is ordered and declared that the properties described in Schedule II hereto (being a part of the properties secured in favour of the Plaintiffs as Mortgage Trustees and as Lenders, and, Defendant No.2 to 7 which are more particularly described in Exhibits A to C to the Plaint and also described in Schedule I hereto) are hereby transferred, conveyed and assigned to the Respondent in enforcement of the aforesaid English mortgage created in favour of the Plaintiff as Mortgage Trustee for the benefit of the Plaintiff as Lender and Defendant No.2 to 7 as Lender for a total lump-sum sale consideration of Rs.8485,44,94,126. It is ordered that the properties described in Schedule II hereto be and are hereby transferred, conveyed and assigned absolutely free and clear of all encumbrances and all dues and claims with respect to the period upto the date of delivery of possession of the properties described in Schedule II hereto to the Respondent and the

> Respondent shall not be liable in respect thereof or for any past dues/claims or encumbrances against or of the Defendant No.1 (except to the extent expressly stated under Clause 17 herein) and the Plaintiff and Defendant Nos.2 to 7 hereby declare for the benefit of the Respondent that all encumbrances in respect of the properties described in Schedule I hereto shall attach to the sale proceeds and be paid by the Plaintiff and Defendant Nos.2, 3, 4, 5, 6 and 7, if found due and payable finally by a court of competent jurisdiction as per priorities inter se in law and the Respondent shall not be liable in any manner whatsoever for any and all past dues and claims including all dues and claims of or against the Defendant No.1 or relating to the properties described in Schedule II hereby transferred, conveyed and assigned to the Respondent."

8. Bare perusal of the said Clause would disclose that in terms of the said Clause the petitioners herein, who

were the respondents in the said Notice of Motion, were assured that they shall not be liable in respect of any past dues/claims or encumbrances against the establishment in question and all encumbrances in respect of the properties described in the Schedule annexed to the Consent Terms shall be paid by the respondent No.1 and the other parties to the proceedings in the Notice of Motion. Undoubtedly, in view of the said Consent Terms, the order dated 22-9-2005 came to be passed wherein it was stated thus:

> "3. In so far as workers are concerned, if they have obtained any award or decree from any court or competent jurisdiction and if they are entitled to pari pasu charge under Section 529-A of the Companies Act, then in that event, plaintiffs and other banks and financial institutions to whom the sale proceeds has been paid under this order shall discharge that liability in accordance with the principles of pari pasu charge provided under Section 529-A of the Act.
>
> 4. In so far as other employees are concerned which are not entitled to such protection under section 529-A they will

> stand along with unsecured creditors and their rights will be covered by the same provision as made in respect of unsecured creditors."

9. Plain reading of the above quoted paras of the said Order would disclose that in terms of para 3, the Court has merely reiterated the statutory assurance given to the employees in respect of their dues under Section 529-A of the Companies Act. Apart from reiterating the said aspect of the matter, no additional or new relief as such has been granted in favour of the petitioners under the said Clause. Similar is the case in relation to Clause 4 of the order dated 22-9-2005 which only reiterates the settled position in law that those who are not entitled for the necessary protection under Section 529-A would stand along with the unsecured creditors. Being so, the order dated 22-9-2005 cannot help the petitioners to justify the contention that they are not necessary parties to the proceedings in the complaints filed by the labours of the respondent No.2 under the MRTU & PULP Act, 1971, in relation to the establishment taken over by the petitioners.

10. As rightly submitted on behalf of the respondents, plain reading of the Consent Terms would disclose that the contention of the learned Advocate for the

petitioners that the petitioners have merely taken over the assets through financial institutions and therefore they are not the successors of the respondent No.2 is devoid of substance. The Consent Terms elaborately refer to the transfer of the properties including the immovable properties of the respondent No.2 as well as the plant standing thereon, wherein the labourers who are the members of the respondent No.1 had been employed. The entire ownership and management of the establishment with its assets and properties having been taken over by the petitioners, the same prima facie discloses that the petitioners are the successors of the respondent No.2 in relation to the said plant and the establishment.

11. As rightly observed by the Industrial Court in the impugned order, the petitioners have not been able to place on record any order to show that the services of the employees involved in the complaints were terminated by following the procedure under Chapter V-B and Section 25FF of the I.D. Act. The Apex Court in **Rashtriya Mill Mazdoor Sangh's** case (supra) had clearly observed that Section 25FF of the I.D. Act by itself does not put an end to the contract of employment on transfer of the ownership or management of the undertaking to a new employer, as there is nothing provided in the said Section which could indicate such consequence on

transfer of an undertaking. It was also ruled that whether the transfer results in the termination of the contract of employment or not, will depend upon either on the terms of the agreement of transfer or on the provisions of the law which effects the transfer. It was further held that

> "The section in terms states that if the terms of the agreement or the provisions of the law have the effect of terminating the contract of employment, every workman in employment in the transferor undertaking would be entitled to notice and compensation in accordance with the provisions of Sec. 25F as if the workmen had been retrenched."

Being so, it cannot be said that merely on account of transfer of the assets and properties, it would result in putting an end to the contract of employment of the workmen which they had with the respondent No.2 in relation to the undertaking in question and which is under the control and management of the petitioners.

12. Attention was sought to be drawn to the decision of the Apex Court in **Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen and others,**

reported in AIR 1963 SC 1489, and in particular to para 17 thereof which reads thus:

> "(17) The scheme of the proviso to S.25-FF emphasises the same policy. If the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading S.25-FF as a whole, it does appear that unless the transfer falls under proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of S.25-FF is to restore the position which the Legislature had apparently in mind when S.25-FF was originally enacted on September 4, 1956. By amending S.25-FF, the Legislature has made it clear that if industrial undertakings are transferred, the employees of such

> transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if the transfer satisfies the three requirement of the proviso."

The above decision does not help the petitioners in seeking interference in the impugned order. In fact, the same justifies the requirement of the presence of the petitioners in both the complaints. Needless to say that as to the liability, if any, of the petitioners which is to be decided in the matter would depend upon the evidence to be led by the parties in the matter. However, that itself would not justify interference in the impugned order and to delete the petitioners from the proceedings when, undisputedly, the entire assets and management of the undertaking is presently in the hands of the petitioners.

13. As rightly submitted by the learned Advocate for the respondents, the Apex Court while dealing with an application for joinder of the parties to such proceedings has clearly held that it is necessary for the Industrial Court to take into consideration all the relevant facts and it cannot be decided merely on the basis of the claim of the party proposed to be joined as

the party-respondent that in terms of some agreement between the management of the undertaking and such party, the entire responsibility to meet with the claim of the employees is taken over by the erstwhile management. All the issues in that regard are required to be decided not only on the basis of any agreement between such parties but also taking into consideration the provisions of law applicable to the parties and the surrounding circumstances. In order to adjudicate upon such issues, therefore, the presence of even such party is not only proper but necessary. Even though the provisions of Order 1, Rule 10 of the C.P.C. are not directly applicable to the proceedings before the Industrial Court while dealing with the complaint under the MRTU & PULP Act, the principle behind the said provision would apply. Since the complaints relate to grievance of the employees about unfair labour practice being adopted by the management and that the management of the undertaking being presently with the petitioners, the need of their presence before the adjudicating authority for final and effective adjudication of the grievance of the respondent No.1 can hardly be disputed.

14. To what extent the petitioners would be liable in relation to the claim of the complainants in the matters in hand will obviously depend upon the evidence to be led by the parties and the adjudication in that regard

by the Industrial Court. However, in order to have proper adjudication of such issues, the presence of the petitioners is absolutely necessary. To what extent there exist the relationship of employer-employees between the respondent No.2 and the complainants stood transferred and in that regard to what extent the petitioners herein could be held responsible for the grievance made by the complainants, will have to be decided by the Industrial Court after hearing the parties and for that purpose the presence of the petitioners would be necessary.

15. For the reasons stated above, I do not find any jurisdictional error committed by the Industrial Court in allowing the applications filed by the respondents for joinder of the petitioners as party respondents.

16. For the reasons stated above, therefore, there is no case made out for interference. Hence, the petitions fail and are rejected.

(R.M.S. Khandeparkar, J.)

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